IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 141 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ARINDBHAI CHHOTABHAI PATEL

Versus

COMMISSIONER OF INCOME-TAX

Appearance:
MR R. K.Patel with Mr. B. D.Karia for for Petitioner

MR Akil Quireshi with Mr MANISH R BHATT for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE A.R.DAVE

Date of decision: 21/09/2000

ORAL JUDGEMENT

Per C. J.:-

In this Reference made at the instance of the assessee, out of four questions, only following question has been referred under section 256 (1) of the Income tax Act,1961, for answer by us:

> "Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that interest payment of Rs.56,042/- on borrowings made for the purpose of payment of tax was not a deductible expense u/s 37 of the I.T.Act, 1961?"

Learned counsel for the parties bring to our notice two decisions of the Supreme court reported in 166 ITR 176 (Padmavati Jaikrishna vs.Addl.CIT) and 224 ITR 627 (East India Pharmaceutical Works vs. CIT).

In the case of Padmavati (supra), the Supreme court held that-

> "..meeting the liability of income tax was a personal one and the dominant purpose for paying annuity deposit was not to earn income but to meet the statutory liability of making the deposit."

In that case, it was further held that expenditure made was not wholly and exclusively for the purpose of earning income and, consequently, the interest, which was paid to discharge the aforesaid tax liability was not allowable under section 57 (iii) of the Act.

Reference may also be made to the case of Madhav Prasad Jatia vs. CIT, 118 ITR 200 decided by the Supreme court, where three conditions are held to be required to be satisfied for coming to the conclusion that assessee can claim deduction in respect of interest on borrowed capital:

i) that money must have been borrowed by the assessee;

ii) that it must have been borrowed for the purpose of business;

iii) that the assessee must have paid interest on the

said amount and claimed it as a deduction.

Both in the case of Madhav Prasad (supra) and Padmavati (supra), it has been held that borrowing was made to meet personal obligation and not obligation of business. Expenditure incurred by the assessee by way of payment of interest thereon, is not for carrying on the business and the said expenditure cannot be regarded as business expenditure. Meeting liability of income tax is personal liability and such expenditure can never be held to be wholly and exclusively for the purpose of earning income in the business.

We find that the question referred, at the instance of the assessee,. is squarely covered against him by the decisions of the Supreme court in Madhav Prasad (supra), Padmavati (supra) and East India Pharmaceutical Works (supra).

Consequently, the question referred is answered against the assessee and in favour of the revenue. Reference is accordingly disposed, but with no order as to costs.

(D. M.Dharmadhikari, C.J.)

(A. R. Dave, J.)

parekh